



MINUTES OF THE LAND RECLAMATION COMMISSION MEETING

March 25, 2004

Vice Chairman Jim DiPardo called the meeting to order at 10:10 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Jim DiPardo; Hugh Jenkins; Bill Duley; Jim Hull; Bob Ziehmer; and Dr. Gregory Haddock.

Staff Present: Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Bill Zeaman; Andy Reed; Larry Hopkins; Richard O'Dell; and Shirley Grantham.

Others Present: Amy Randles, Attorney General's Office; Mike Giovanini, Associated Electric Coop., Inc.; Mikel Carlson, Gredell Engineering; Jack Atterberry, Associated General Contractors of Missouri; Jim Dunn, Senator Sarah Steelman's Office; and C. Scott Hiebert, Old Monroe Sand and Gravel.

1. ELECTION OF OFFICERS FOR 2004

Mr. Jenkins nominated Mr. DiPardo to serve as Chairman. Dr. Haddock seconded; motion carried unanimously. Mr. DiPardo was therefore elected Chairman.

Mr. Ziehmer nominated Mr. Jenkins to serve as Vice Chairman. Mr. Hull seconded; motion carried unanimously. Mr. Jenkins was therefore elected Vice Chairman.

2. MINUTES OF THE JANUARY 22 AND FEBRUARY 2, 2004, MEETINGS

Dr. Haddock made the motion to approve the Minutes as written. Mr. Jenkins seconded; motion carried unanimously.

3. ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Cabanas presented this report to the Commission. He stated the Perche Creek Project is almost completed. Seeding will hopefully be completed within the month. Mr. Cabanas stated designs for the Miller's Creek Project located in Callaway County are in the final review states, and it is hoped that this project will be put out for bid this spring, subject to availability of AML funding.

Mr. Cabanas stated that, regarding AML emergency projects, the Mindenmines Highwall Project located in Barton County has been completed. Another project, referred to as the Highway T project located in Macon County, was brought to the Program's attention by the Missouri Department of Transportation. It was indicated that a section of Highway T was subsiding from what was suspected to be the effects of underground mining beneath the highway right-of-way. The Office of Surface Mining conducted drilling along the suspect areas, and voids were found during that process. Following identification of the problem areas, the contractor pumped over 996 cubic yards of cement into the void along about 700 feet of the roadway. Drilling and grouting took about two weeks to complete, and the approximate cost was \$131,284.00.

Mr. Cabanas stated regarding non-coal shaft closures, the Modine Pb/Zn Shaft Project in Jasper County consisted of closing two shafts on the Modine Company property in Joplin, one of the two shafts was open and within a few hundred feet of a residential area. The other non-coal shaft closure was the Taylor Shaft in Newton County located on land directly adjacent to the George Washington Carver National Monument in Diamond, Missouri. The work on this project has also been completed. Mr. Cabanas noted that approval was received from the Office of Administration for the Jasper County Shaft closure for the Phase III Project. This project will involve closing of twelve open shafts in the Joplin area in the next several months. Terradyne LTD is the contractor for the project.

Mr. Cabanas stated with regard to bond forfeiture sites, the Program is planning to conduct work at Pits 17 and 15 at Missouri Mining located in Putnam County. The work at these sites involves mainly deep gully repair and pond renovation. Several smaller projects at the Missouri Mining site would involve Pit 14 North and Pit 14 South. At Pit 12, which is a slightly larger project, it is hoped that the final completion of reclamation at this site can be done either later this summer or in 2005. However, upon inspection of the site this past winter, it was noted that there was a large off-site impact created at this site involving a breached dam. It is anticipated that the work on the dam will be done this summer. The rest of the work to be done at this site is of lower priority. In addition, maintenance work will be done at Universal Coal and Energy's Pit 51 and Bill's Coal Company.

4. PERMITTING

Request for Hearing - Old Monroe Sand and Gravel (Attachment 2). Mr. O'Dell stated the Program received a new permit application from Old Monroe Sand and Gravel in August 2003 to mine sand and gravel in the Mississippi River floodplain on 114 acres of land located in Lincoln County until September 2078. The company published a public notice in a newspaper that has circulation in the area. The company also sent, by certified mail, a notice of intent to operate a surface mine to the appropriate county

officials as well as adjacent landowners. Mr. O'Dell stated that during this public comment period, the Program received six letters concerning this permit application. Concerns noted in the letters were sedimentation, local flooding, noise pollution, and road traffic. Old Monroe Sand and Gravel has completed all the requirements to obtain a new permit under the Land Reclamation Act. Therefore, it is the Staff Director's recommendation to issue the new permit to Old Monroe Sand and Gravel for the Old Monroe site located in Lincoln County. The recommendation for approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act does not weigh against the surface mining of minerals in this instance; therefore, the recommendation is to approve this application.

The company had no comments.

None of the complainants were present.

Mr. Jenkins made the motion that the Commission follow the staff's recommendation to deny the above request for a hearing. Mr. Hull seconded; motion carried unanimously.

5. ENFORCEMENT

Settlement Agreement, R & J Quarry (Attachment 3). Mr. Larsen stated the Commission signed a Notice of Formal Complaint in July 2001 which was issued for the company's failure to abate a Notice of Violation issued in May 2001 for failure to renew a mining permit. Because there was some difficulty in locating the operator, the Formal Complaint was not received by the operator until August 2002. In September 2002, the company requested a hearing be held concerning this Formal Complaint. This hearing was granted by the Commission at its September 2002 meeting. Since that date, negotiations have been conducted with the company, the Attorney General's Office, and the Program staff in an effort to resolve the matter of the Formal Complaint and to reach a mutually agreeable settlement. These negotiations were successful and have resulted in a Consent Agreement which stated that the reclamation bond posted by the company for the mine site in the amount of \$8,000.00 will be split between the Program and the company. The monies retained by the Program would be more than adequate for completing the reclamation and cleanup of the mine site. This was a very small quarry, pre-law, and very little stone was removed from this quarry. The staff recommends the Consent Agreement be approved and signed by the Commission, following which the staff will work with the Attorney General's Office to obtain the agreed upon amount of bond money for use in completing the necessary clean up at the site at some future date.

Mr. Jenkins made the motion the Commission approve and sign the Consent Agreement for R & J Quarry. Mr. Ziehmer seconded; motion carried unanimously.

Request for Hearing - J. M. Burger (Attachment 4). Mr. Larsen stated this operation is small. The commission signed a Notice of Formal Complaint at its November 2003 meeting which was issued for the company's failure to abate a Notice of Violation and for failure to pay an administrative penalty associated with the Notice of Violation. Following receipt of the Notice of Formal Complaint, the company requested that a hearing be held. The staff recommends the Commission grant a hearing and that the matter of the hearing be referred to the Administrative Hearing Commission.

Mr. DiPardo asked why the company is requesting a hearing?

Mr. Larsen stated the Formal Complaint was issued for a Notice of Violation for the company's failure to replace a bond and for failure to pay the fine associated with the violation in the amount of \$800.00. There are no environmental impacts at the mine site, such as off-site sedimentation or failure to reclaim. The company feels it has the right to request the hearing, which they have done.

Mr. DiPardo asked whether the company was currently mining?

Mr. Larsen stated a permit has been issued, but the violation has not yet been abated.

Mr. Zeaman stated the company has been doing infrequent mining.

Mr. Larsen stated the company is continuing to mine and working on replacing the bond. The company has requested this hearing so that the staff isn't forced to move forward and recommend revocation of the permit. The company is also attempting to pay the administrative penalty. The staff feels if the company is allowed additional time, it will meet these required obligations.

Mr. Jenkins noted that the Administrative Hearing Commission would have to assign a hearing officer to this case and schedule for hearing. Would it be better to table this issue until the May meeting to see if a hearing is actually required? That would save everyone time and effort.

Ms. Randles stated another alternative would be to ask the Administrative Hearing Commission that the case be assigned, but that the parties not be put into a hearing schedule for a month or two to see if all parties can work out the issues.

Mr. Jenkins made the motion to table the issue of the hearing request for J. M. Burger until the May meeting. Dr. Haddock seconded; motion carried unanimously.

Robert Gilliam - Referral to Attorney General's Office (Attachment 5). Mr. Larsen stated the staff received a complaint regarding a clay mining operation without a permit in Monroe County near Paris, Missouri. An inspection of the area was conducted in September 2003; however, it was not clear if the operation was being performed upon pre-law lands or post-law lands. Pre-law mining does not require a permit as long as the operator confines the mining to the pre-law areas. At the time of the inspection, it was not possible to ascertain if the operator was on pre-law or post-law areas because suitable maps and GPS equipment would not be available until a later date. A follow-up inspection was conducted in December 2003 using suitable maps and electronic GPS equipment. It was determined that a portion of the mine did exist on areas requiring a permit. In addition, a portion of the mine site which was pre-law had been reaffected by the placement of post-law overburden materials. It was determined that the operator was approximately 9 acres outside the pre-law pit, but had also hauled dirt, overburden, from the post-law area back into a pre-law area on about 11 acres. Therefore, a total of 20 acres were identified as needing to be permitted by the company. In January 2004, in an effort to persuade the operator to obtain the necessary mining permit, the staff sent the company an inspection report detailing the areas requiring a permit, along with all of the necessary application forms and instructions and maps, by certified mail. The packet of information, which was marked as "refused," was received back by the Program on January 22, 2004. On March 9, 2004, Notice of Violation 934-001 was issued to the company for conducting surface mining without a permit. Abatement of the violation required submission of a completed application within 30 days of the operator's receipt of the notice. The Notice of Violation was also returned to the Program as being "refused." Per the regulations, if the person to receive the certified materials (Notice of Violation) refuses to accept delivery of that Notice of Violation, then the service requirements of the rule on the part of the Program shall be deemed to have been met. In addition, per regulation, in the case of a failure to abate a Notice of Violation or refusal to accept the Notice of Violation issued for unpermitted mining, the commission shall request the attorney general to file suit in the name of the state of Missouri for injunctive relief and civil penalties not to exceed \$1,000.00 per day for each day the violation has occurred and that suit may be filed either in the county where the violation occurs or in Cole County. The staff therefore recommends that the Commission refer this matter to the Attorney General's Office for injunctive relief and appropriate civil penalties in the County of Cole.

Dr. Haddock made the motion to accept the staff's recommendation to refer the above matter regarding Robert Gilliam to the Attorney General's Office for further legal action. Mr. Hull seconded; motion carried unanimously.

6. **BOND RELEASES**

Coal: (Attachment 6)

Associated Electric Coop., Inc., PP-03-01, NEMO Mine, Increment 1, Permit

1982-22. Mr. Hall stated this liability release request is for Phase II and III release on 2.5 acres of prime farmland with a bond liability amount of \$1,250.00 and Phase III release on 158.5 acres, which includes 130 acres of pasture lands, 17.5 acres of cropland, and 11 acres of water, for a release request amount of \$79,250.00. The total release request is for \$80,500.00.

Associated Electric Coop., Inc., PP-03-02, NEMO Mine, Increment 1, Permit

1983-15. Mr. Hall stated this release request is for Phase III liability release on 4.0 acres for a release amount of \$2,000.00. The post-mining land use is pasture.

Associated Electric Coop., Inc., PP-03-05, NEMO Mine, Permit 1983-11. Mr. Hall stated this liability release request is for Phase III release on 2 acres of pasture for a release amount of \$1,000.00.

Mr. Hall stated the Office of Surface Mining reviewed these applications, and they have made the determination that the areas have been reclaimed properly and that all conditions required to qualify for the types of releases requested have been met and recommend approval of the release requests.

Dr. Haddock made the motion that the Commission approve the above three bond release requests as presented for Associated Electric Coop., Inc, at the NEMO Mine. Mr. Jenkins seconded; motion carried unanimously.

7. **OTHER BUSINESS**

Commission Review of Existing Policy Concerning Mining vs. Development. Mr. Coen stated legislation has been introduced to take this issue from a policy or rule to more clearly define who needs a permit and who doesn't as it relates to the construction industry. Not everyone was satisfied with several of the proposals. The industry groups met and agreed on substitute language for the proposed legislation.

Mr. Ziehmer asked whether Program staff have continued to look at the existing policy and explore changes in the rules or regulations to address concerns. Is that process continuing, and is the staff still working with the stakeholders in both the area of the policy and exploring rule changes?

Mr. Coen replied the staff was continuing those discussions until about two weeks ago when the legislative process started. It has not been pursued during the last several weeks.

Mr. Jack Atterberry, Associated General Contractors of Missouri, stated in discussions regarding the policy and regulations, it became apparent that there were some terms in the statute that probably stood as road blocks to resolving these issues and putting a commercial purpose in mining. Part of the purpose of the proposed legislation is to define those terms. Another purpose was to set out clear guidance that the operators in the field and the Commission and staff could rely on to separate what is mining from what is construction. The substitute proposal sets up a series of presumptions of situations which indicate construction or mining. This would still provide the Commission with the option in the case of an investigation or complaint to challenge the presumption that something was exempt from a permit. The substitute and original bill also set out an informal process for bringing something fairly quickly to the Commission to make a determination as to its position as to whether a permit is required or not. If a project were delayed for six months or more to obtain a permit, it would be a big problem for the developer and for the contractor. The issue of some short time periods to gather the information can be compromised and resolved. Another point in the bill, there is no intention on the part of AGC to provide an illegal operator of a mine with cover to operate without a permit. Mr. Atterberry stated he felt the guidelines are clear on how to separate that, but to keep operators/contractors honest, there has to be some deterrent. Added into the bill is a clause that says that if the Attorney General brings suit to collect a civil penalty from someone operating without a permit, which is \$1,000.00 per day, if fraud is alleged by reporting to be a construction or land improvement site which does not require a permit, then the court has the flexibility of imposing up to double the amount of the cumulative civil penalty.

Mr. Jenkins asked regarding an issue on page 10 of the proposal, regarding number 7, the last sentence stating "required by written contract," was there something specific in mind, as that appears to be a rather broad statement? How is it that there could not be a written contract to remove gravel and sell it from the site?

Mr. Atterberry stated the written contract requiring excavation for purposes of construction, per the last words on that line. Any type of construction project, public or private, will always have a written contract. There may be subcontracts involved also. That should be a good test--either there is a contract or there isn't. If it were a contract to dig a big hole and take out the rock, that would not qualify under this criteria.

Mr. Jenkins asked what would restrict it from qualifying in that criteria?

Mr. Atterberry stated because it requires excavation, moving or removing of minerals or fill dirt for purposes of construction, with construction being a defined term.

Mr. Jenkins stated this could be a loophole that if someone has a written contract, there may be some question in this.

Mr. Atterberry stated that if there is a way to tighten that down further so that it is clarified that the contract is for excavation for purposes of construction and not excavations for commercial purposes of removing the mineral and selling it, it can be done.

Mr. Rudloff stated that the language could be changed to read "for purposes of this construction as defined in this act," referring to this specific definition of construction.

Mr. Jenkins also noted that on page 5 of the proposal, on the last phrase, the whole portion that is in bold print, specifically the last phrase, it says that "surface mining should not be construed to mean...anything done in preparation for construction." That language seems to be loose too. Construction is defined as "excavation, land clearance, removing of minerals, removing of fill dirt," that is too broad a definition.

Mr. Rudloff stated it is difficult sometimes to define and identify a specific line between what are construction projects and mineral quarrying and sand and gravel operations. The approach to the proposal was to differentiate between a project that is a construction project where there are plans for a specific building, road, highway and has engineering plans, something that everyone can look at and say this is the nature of this project, this is the scope of the project, and everyone agrees that it is well defined; and if there are excess materials, minerals, or dirt that has to be gotten rid of from that site and can't be used at the site for practical purposes, it has to be removed to complete that project as designed, the proposal has been written to allow a little more flexibility to get the material out of the way. The other type of project that is identified is a site development or just a general land clearing or land improvement type of project where someone is going to be doing some leveling. There is nothing well defined that is going in there, something, hopefully, for some future time. To use a loophole to set up a mining operation and continue year after year of selling materials and really operating it as a mine, but calling it something else, that is what the proposal has attempted to do is to tighten the language saying that any excess material taken off-site cannot be processed in any way to make a marketable commodity. This removes much economic incentive for someone to set up something that exists but is something other than what it is called. If it is a bona fide land clearing project or site development, that can be done and can use whatever disturbed materials on site; and anything else can be moved out of the way--it just can't be refined into a marketable material. Mr. Rudloff stated he could not imagine anyone setting up a quasi-quarry and operate under a loophole if they can't refine that product and make it a marketable aggregate product.

Dr. Haddock asked about the definition on page 3 of the proposal for "construction" which does include land clearance.

Mr. Atterberry noted the definition of "construction" does include land clearance, but it is in connection therewith which would mean construction, erection, alteration, maintenance, or repair of any facility, including, but not limited to, a building structure, highway, road, bridge. If there is an area where the dirt and rocks are going to be moved around to make it a better site and sell to someone someday, and there is no engineering plan, there is no contract such as for a new shopping center by a certain date, then it would not fit this definition because that kind of land clearance is not in connection with construction, erection, alteration, maintenance, or repair of a building structure, highway, road, or bridge. That is the intent.

Dr. Haddock asked whether the word "therewith" does this?

Mr. Hull asked Mr. Atterberry about the staff's concerns about time frames for reviews and responses back.

Mr. Atterberry stated the way it is written now is if the staff were to make a determination that what is purported to be a construction site needs a mining permit, the staff would issue a letter saying these are the reasons. The company could ask for an informal conference with the Program Staff Director within 15 days from receipt of the letter. Then it requires the Staff Director to issue a written determination within 15 days. The staff had concerns that this period would be too short and that 30 days had been discussed. This issue can be worked out. If the company does not agree with the Staff Director's finding that a permit is required, then the company could request to present its position at the Commission's next regularly scheduled meeting.

Mr. Rudloff stated the proposal tries to define so that a project will either be on one side or the other, and with the rebuttal presumption language, hopefully, a company would only come before the Commission when there is some doubt as to whether the project is what it is stated to be. He stated he felt this would not be a question on every project, just the ones where someone might question it.

Mr. Atterberry stated that recent instances where this situation has come up have come before the Commission or staff for variances. The potential for the Commission getting a lot of requests are greater for the variance than it is with the proposal more clearly defining the lines. Now, potentially, every project that could come under the current policy, where a variance is requested, there could be thousands of variance requests a year.

Mr. DiPardo asked whether the parties could get together and work on the definitions and the time frames.

Mr. Atterberry stated he would contact the Program staff next week.

Mr. Rudloff noted that the legislative process will be continuing.

Ms. Randles stated she felt the issue of land improvement is a problem in that it indicates development in the future with no particular plans at the present time. Legally, she stated she did not understand the rationale of placing the burden of proof on the Commission when it makes a decision about whether someone needs a permit when the staff and the Commission have not initiated any action against an operator. The potential for the Commission to be overrun is much greater than what is being suggested. Ms. Randles stated she did not agree with Mr. Atterberry's raising the issue of what are statutory barriers to accomplishing a revision of the current policy that would make the lines clearer that construction sites are not subject to mining. She stated there is a way to refine the policy through rulemaking that would provide a great deal of clarification and eliminate a lot of problems. For example, the time period limit of three years to get a project done. There is really no reason to include that. There are a number of ways to work within the existing statute that would accomplish the Commission's purposes. If the Commission wants to make a company exempt if it wants to have a 200-acre site and it wants to construct something on just 1 acre of it, the Commission needs to decide this policy. According to the current proposal, in that situation, the company would be exempt from mining. Ms. Randles stated the Commission can address the real concern through rulemaking, and not through a statutory change. Ms. Randles noted that the definition of excavation does look like it is tied to purposes of construction at the site of excavation. The term "excavation" is used in other parts of the statute, and Ms. Randles stated she was not sure that the definition of "excavation" should be defined that way for all purposes under The Land Reclamation Act.

Mr. Coen stated he realized the Commission had just received the proposal today and asked that if they could provide him with any suggestions or comments or questions, he would convey them to Mr. Atterberry and Mr. Rudloff.

Ms. Randles stated that one question is what are the situations where a permit should be required or not required. That is a policy decision and an issue for the Commission to decide. There is a separate question of whether a specific set of language, changes to the statute or changes to the rules, accomplishes that or not. The difficulty is how to judge whether the language accomplishes your goal if it is unsure what the goal is. Ms. Randles suggested the Commission provide the situations where they feel a permit is needed and those that do not require a permit.

Mr. DiPardo noted that the Commission should provide its thoughts and comments to Mr. Coen to pass on.

Mr. Coen noted that the staff had issued a variance request for Team Excavating, with regard to the above policy issue, as approved by the Commission at its January 2004 meeting.

Land Reclamation Program Employee of the Month for February 2004. Mr. Coen noted the LRP Employee of the Month for February was Richard O'Dell.

Closed Session. Mr. Jenkins made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on May 27, 2004, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. Hull seconded; motion carried unanimously.

Adjournment. The meeting was adjourned at 11:28 a.m.

Respectfully submitted,

Chairman